

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

KARI MIODONSKI,

Plaintiff,

vs.

Case No. 2006-1394-CZ

ADAM GILEZAN and  
TROY GILLETTE, d/b/a  
PRISTINE LIMOUSINE,

Defendant.

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OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff has filed responses seeking denial of that motion and, in the alternative, an order allowing her to amend the case caption.

Plaintiff filed this complaint on March 30, 2006. Plaintiff claims that on April 30, 2004 defendants contracted with Joseph Miodonski for the sale of Pristine Limo Services. Joseph Miodonski assigned his remaining interest in this contract to plaintiff, pursuant to a divorce judgment. Plaintiff alleges that defendants have failed to make timely payments, are currently \$50,000 behind in payments, and owe a remaining balance of approximately \$120,000. Further, plaintiff claims defendants have refinanced two limousines in their names, therefore diminishing her collateral. Plaintiff now seeks damages for count I, breach of contract, and count II, equitable relief.

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*,



442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

A motion under MCR 2.116(C)(10) tests the factual support for a claim. In reviewing such a motion, the court will consider affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Smith v Globe Life Insurance Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is (1) no genuine issue in respect to any material fact and (2) the moving party is entitled to judgment as a matter of law. *Smith, supra*. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 446.

Defendants contend that plaintiff has failed to allege they are a party of the contract dated April 30, 2004 between AKJ Enterprises, Inc ("AKJ") and Gillette & Gilezan Enterprises, Inc ("GGE"). Defendants assert they are not legally obligated under the contract. According to defendants, plaintiff has not demonstrated that it is appropriate to pierce the corporate veil. Defendants argue plaintiff has provided no support for her claim.

In response, plaintiff argues that defendants are the sole shareholders of GGE and signed the sales document in an individual capacity. Plaintiff asserts the GGE is not maintained

pursuant to the Michigan Business Corporation Act ("MBCA") and is currently undercapitalized. This evidence, plaintiff contends, demonstrates fraud and piercing the corporate veil would be appropriate. In the alternative, plaintiff requests the ability to amend her complaint to add GGE to the caption and properly assert a claim to pierce the corporate veil.

Under ordinary contract principles, if the language of a contract is clear and unambiguous, its construction is a question of law for the court. *Michigan National Bank v Laskowski*, 228 Mich App 710, 714; 580 NW2d 8 (1998). A provision is ambiguous when its words may reasonably be understood in different ways. *Trierweiler v Frankenmuth Mutual Insurance Co*, 216 Mich App 653, 656-657; 550 NW2d 577 (1996). If the contract language is unclear or reasonably susceptible to more than one meaning, a question of fact for the fact finder exists. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491-492; 579 NW2d 411 (1998).

Upon review of the record, the Court finds that the sales agreement, bill of sale, and promissory note were between AKJ and GGE. Defendants are the sole shareholders, president, and vice-president of GGE and did sign the documents, but the documents unambiguously indicate that GGE was the buyer and grantee. See Exhibits of Plaintiff's response to defendant's motion for summary disposition; Exhibit B of Defendants' reply brief in support of motion for summary disposition. There is no evidence that the intent was to bind defendants individually to the contract. Therefore, defendants are not individually liable under these agreements.

Plaintiff has alleged in her response a cause of action against defendants for breach of contract under the theory of piercing the corporate veil. Generally, a corporation is treated as entirely separate entity from its stockholder, even where one person owns all the stock, however, when this fiction is invoked to subvert justice, the courts may ignore it. *Foodland Distributors v*

*Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996). The Court may pierce the corporate veil where the corporate entity is mere instrumentality of another entity or individual, corporate entity was used to commit fraud or wrong, and there was unjust loss or injury to plaintiff. *Id.* at 457.

Here, plaintiff has not provided the Court with any documentary evidence to support her request to pierce the corporate veil. The record does not substantiate plaintiff's allegations that GGE was not maintained pursuant to the MBCA and was undercapitalized. The documentary evidence presented indicates GGE was formed under the MBCA and is an active corporation that has filed its annual report. *See* Exhibits A, B, and C of Defendant's reply brief in support of motion for summary disposition. There is no indication, apart from plaintiff's unsupported and unsworn allegations, that GGE is the mere instrumentality of defendants or that GGE was used to commit fraud.

Based on the documentary evidence, there is no genuine issue of material fact that defendants are not parties to the contract. Since plaintiff has not supported her contention to pierce the corporate veil, the Court is satisfied that defendants are not legally obligated under the contract.<sup>1</sup>

For the reasons set forth above, defendant's motion for summary disposition is GRANTED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and closes the case.

IT IS SO ORDERED.


Dated: August 7, 2006

DONALD G. MILLER - Circuit Court Judge

CC: Nunzio G. Provenzano - Joseph A. Lavigne

**DONALD G. MILLER**  
CIRCUIT JUDGE

<sup>1</sup> Based upon the Court's conclusion, it is unnecessary to address plaintiff's remaining request to amend the complaint.

A TRUE COPY  
GARMELLA BARAUGH, COUNTY CLERK  
BY:  Court Clerk  
AUG - 7 2006